IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.9532/2007.

H.D.F.C. Bank
Vs.
M/s.Vijay Yadav and ors.

Date of order : 29/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Pankaj Gupta for the petitioner.

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BY THE COURT:-

Heard learned counsel for the petitioner.

2) The petitioner-HDFC Bank Ltd. has challenged the order dated 3/9/2007 by which, the learned executing court issued only notices whereas, grievance of the petitioner-HDFC Bani is that simultaneously attachment orders against the respondents as provided under Section 36 of the Arbitration and Conciliation Act, 1996 should have also been issued. The execution application was filed by the petitioner-HDFC Bank for execution of the arbitral award passed by the Arbitral Tribunal, Jaipur dated 8/1/2007 in favour of the petitioner-

HDFC Bank.

3) In support of his aforesaid argument, learned counsel for the petitioner has relied on the provisions of Order 21 Rule 22 CPC and has argued that by virtue of Section 36 of the Act of 1996, award of the Arbitrator be liable to be enforced in the same manner as if the decree of the court under the provisions of the Code of Civil Procedure, 1908 is liable to be enforced and in their cases, the learned executing court is required to proceed straightway to execute the decree without issuing any notices. Otherwise, it would result in dual proceedings, one before the Arbitrator and then another before the executing court.

4) On being asked, learned counsel for the petitioner submitted that so far, they have not received any notice of objection being filed by the respondents under Section 34 of the Act of 1996. Result of filing of any application /objection under Section 34, would have been the stay of execution of the award. The notice issued by the executing court to the respondents is not could be intended to ascertain whether any such objection has been filed

particularly when award by itself would not be extendable upon filing of objection. Even for deciding the controversy raised in the present matter, this court would also be considering issuance of notice to the respondent. When already therefor the executing court has issued notices to the respondents, I do not deem it appropriate to entertain this writ petition only against issuance of such notice.

5) It is clarified that upon service of notice on the judgment-debtor-respondents, the executing court while transferring the execution petition to the concerned court, shall require the parties to appear before that court on a re-notified date. Thus, there is no need for separate notice on the respondents.

The writ petition being devoid of merit, is therefore dismissed summarily.

(MOHAMMAD RAFIQ), J.

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